

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BENEDICT EDMUND DEL ROSARIO,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

CASE NO. C13-0001-JCC

ORDER DENYING 28 U.S.C. § 2254
PETITION AND DISMISSING CASE
WITH PREJUDICE

This matter comes before the Court on the Report and Recommendation of the Honorable Brian A. Tsuchida, U.S. Magistrate Judge, to deny Petitioner Benedict Edmund Del Rosario's 28 U.S.C. § 2254 petition for a writ of habeas corpus (Dkt. No. 18) and Rosario's objections thereto (Dkt. No. 19). Having thoroughly considered the petition, the Report and Recommendation, Rosario's objections, and the balance of the record, the Court hereby ADOPTS the Report and Recommendation, DENIES the petition, and DISMISSES this case with prejudice for the reasons explained herein.

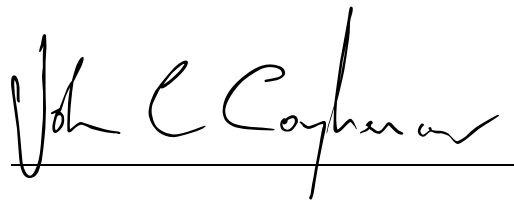
The Report recommends denying Rosario's petition because it is time-barred and because Rosario does not qualify for equitable tolling of the one-year limitations period. *See* 28 U.S.C. § 2244(d)(1); *United States v. Battles*, 362 F.3d 1195, 1197 (9th Cir. 2004). In his objections, Rosario asks the Court either to hold a hearing on his petition or to issue a certificate of appealability. He reiterates his contention on the merits that his "restraint is unlawful." However,

1 he advances no argument for why his petition is not time-barred or why he is eligible for
2 equitable tolling, and thus fails to put the Court on notice of any potential errors in the Report—
3 including its recommendations that the Court not hold an evidentiary hearing and deny a
4 certificate of appealability. Rosario has not “demonstrate[d] that reasonable jurists would find
5 the [Report’s] assessment of [Rosario’s] claims debatable or wrong.” *Miller-El v. Cockrell*, 537
6 U.S. 322, 338 (2003) (quotation marks omitted); *see also Schriro v. Landrigan*, 550 U.S. 465,
7 474 (2007) (“if the record . . . precludes habeas relief, a district court is not required to hold an
8 evidentiary hearing”).

9 Accordingly, the Court ADOPTS the Report and Recommendation (Dkt. No. 18);
10 DENIES Rosario’s 28 U.S.C. § 2254 habeas petition as time-barred; DISMISSES this case with
11 prejudice; and DENIES issuance of a certificate of appealability. The Court respectfully
12 DIRECTS the Clerk to send a copy of this order to the parties and to Judge Tsuchida.

13 DATED this 5th day of June 2013.

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A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE